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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 378

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PAUL C. FISHER d/b/a FISHER PEN COMPANY,
Petitioner,

v.

MARTIN P. DURKIN, Secretary of Labor,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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No.

PAUL C. FISHER, d/b/a FISHER PEN COMPANY,
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v.

MARTIN P. DURKIN, Secretary of Labor,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The defendant, Paul C. Fisher, asks that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered on June 17, 1953, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, dated September 18, 1952.

Summary Statement of the Matter Involved

This is a case in which an individual has undertaken to defend his right to be free from unreasonable search and seizure as guaranteed to him by the Fourth Amendment to the Constitution of the United States.

This case was summarized in the opinion of June 17, 1953, issued by the United States Court of Appeals for the Seventh Circuit:

"Before MAJOR, *Chief Judge,* SWAIM, *Circuit Judge,* and BRIGGLE, *District Judge.*

" BRIGGLE, *District Judge.* Respondent is the sole proprietor of the Fisher Pen Company, located in Chicago, Illinois. His business is that of production, sale and distribution of ball point pens and precision parts for the electronics industry. This appeal is from a decision of the District Court adjudging respondent in civil contempt of that court for failure to comply with its order directing respondent to produce certain of his business records, as required by a subpoena duces tecum issued pursuant to Sections 9 and 11(a) of the Fair Labor Standards Act (Title 29 U. S. C. A. Sec. 209 and 211(a)), and Section 9 of the Federal Trade Commission Act (Title 15 U. S. C. A. Sec. 49.)[1]

" 1, Sec. 209. Attendance of Witnesses

" For the purpose of any hearing or investigation provided for in Sections 201-219 of this title, the provisions of Sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

" Sec. 211. Investigations, Inspections, and Records

" (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to Sections 201-219 of this title, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of Sections 201-219 of this title, or which may aid in the enforcement of the provisions of Sections 201-209 of this title. Except as provided in Section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investi-

" After some verbal skirmishing concerning a proposed examination of the books and records of respondent, the Regional Director of the Wage and Hour Division of the United States Department of Labor, on February 1, 1952, at the request of respondent, wrote a letter requesting permission to complete an investigation of his books and records, calling attention to the provision of Sections 9 and 11(a), *supra,* and asking respondent to reconsider his refusal to permit such investigation. On February 15, 1952, respondent answered the letter, asserting his desire to rest on the Fourth Amendment to the Constitution of the United States, he feeling the request improper inasmuch as no complaint was on record either by the Wage and Hour Division or any of his employees.

" Thereafter on March 21, 1952, the Administrator issued a subpoena duces tecum requiring the respondent to appear and bring his wage-hour records before John W.

" gations and inspections necessary under this section. Except as provided in Section 212 of this title, the Administrator shall bring all actions under Section 217 of this title to restrain violations of Sections 201-219 of this title.

" Sec. 49. * * *

" Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * *

" No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: * * *.

" Warsing or Gerald J. Mitchell, officers of the Wage and Hour and Public Contracts Divisions, on the 14th of April 1952, at 10 a. m. On the day named Fisher appeared in person but did not produce the records designated, and has not since produced them.

" On May 21, 1952, Application was filed in the District Court to compel compliance with the subpoena duces tecum. On the same day a show cause order issued out of the District Court, directing respondent to show cause on June 11, 1952, why an order should not issue directing the said respondent to appear before the petitioner and there produce the books, papers and documents and to give evidence as required by the subpoena duces tecum. On the 11th of June, 1952, the respondent appeared *pro se,* but did not produce the books and records and on June 27, 1952, the District Court by its order directed him to comply with the subpoena on the 28th of July, 1952, at his own place of business and "do everything which may be necessary to permit such investigation to be carried out in accordance with Section 11(a) of the Act." Respondent having failed to comply with this Order, a Petition, citing him for civil contempt was filed by the United States Department of Labor on August 11, 1952, and on the same date a show cause order was entered against respondent requiring him to show cause by September 15, 1952. A hearing was had on this order on September 15 and on September 18, 1952, the Court entered an order committing Fisher to the custody of the Attorney General for civil contempt until he should purge himself of contempt by complying with the order of June 27, or until otherwise discharged by due course of law. Commitment was stayed pending the appeal.

" Respondent (Appellant here) bottoms this review upon the assertion that the order of the District Court requiring him to produce certain records amounts to an invasion of

his constitutional rights under the Fourth Amendment (U. S. C. A. Constitution, Amendment 4), and is, therefore void and of no effect. He did not appeal from his order, but has appealed from the order of September 18th, 1952, adjudging him guilty of contempt and directing that he be committed to the custody of the Attorney General until he should purge himself of contempt by producing the books and records specified in the order of June 27, 1952.

The Department contends that respondent cannot now challenge the constitutional validity of the order of June 27th, 1952, as he did not appeal from that order. We need not labor this question, as the order of June 27th is clearly valid under the numerous decisions of the Supreme Court of the United States and other courts. *Oklahoma Press Pub. Co.* v. *Walling,* 327 U. S. 186; *Fleming* v. *Montgomery Ward & Co.,* 114 Fed. (2) 384; *Shapiro* v. *United States,* 335 U. S. 1.; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501; *United States* v. *Darby,* 312 U. S. 100; *Davis* v. *United States,* 328 U. S. 582.

Respondent also urges that the order to produce is invalid because not based on a showing of probable cause. This contention cannot prevail because the authority to compel respondent to produce the documents in question is encompassed in the Congressional Act and the legislation is upon a subject within the power of Congress. The record in the instant proceeding shows that the request upon respondent was reasonable as measured by the terms of the Act and as construed by the courts and in no sense burdensome.

Respondent's thesis is based upon the well grounded belief on his part that his own private records deserve exemption from the prying eyes of others, particularly when, as he asserts, none of his employees have made any complaint and all are satisfied with the terms of their employment as relates to hours and wages. He somewhat

" assumes the attitude of the soldier who, when pressed by various Draft Boards with questions as to his whereabouts and his employment, responded with the query "Who is trying to get his nose in my business now?" The writer of this opinion is in complete sympathy with respondent in this respect, but when it comes to overriding a legislative enactment that has been held constitutionally valid by our Supreme Court, we must part company with respondent in favor of constituted authority. Respondent believes and we think sincerely, that the law in question, as enacted by Congress and interpreted by the Supreme Court is inimical to our democratic institutions, but we think he has chosen the wrong forum for presentation of his views.

" The record here does not warrant a reversal of the judgment of the District Court finding respondent guilty of contempt and will, therefore, be affirmed.

AFFIRMED."

The defendant on numerous occasions offered to open his records voluntarily to examination by the Labor Department if "probable cause" were shown (R. 34), (R. 25), (R. 14), (R. 46). These offers were ignored by the Labor Department and by the District Court.

Opinions of the Lower Courts

The opinion of the Circuit Court of Appeals is printed above. The opinion of the District Court (R. 47 to 50).

Grounds on Which Jurisdiction of this Court is Invoked

A. Basis for Jurisdiction of this Court.

The jurisdiction of this Court is invoked under (Title 28 Section 1254 U. S. C. A.) Act of June 25, 1948, Chapter 646, 62 Statutes 928.

B. The Statutes Involved.

The Fourth Amendment to the Constitution of the United States which reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Sections 9 and 11(a) of the (so called) Fair Labor Standards Act (Title 29 U. S. C. A. Section 209 and 211(a)).

Section 9 of the Federal Trade Commission Act (Title 15 U. S. C. A. Sec. 49).

C. Date of the Order to be Reviewed.

The order of the Circuit Court of Appeals affirming the order of the District Court was entered June 17, 1953. This petition for *Writ of Certiorari* and supporting transcript of record are filed in this Court within ~~three~~ 90 ~~months~~ days from ~~June 17~~ July 13, 1953, on September , 1953.

Question Presented

1. Is the District Court's "Order to Produce Documentary Evidence" (which was issued without probable cause) in violation of the Fourth Amendment and therefore, unconstitutional and void?

Reasons Relied on for the Allowance of this Writ

1. The opinions of the United States Court of Appeals and the District Court *failed* to even consider the language of the Fourth Amendment.

2. The Constitutional Question involved here as it applies to the demanded "routine" search (without probable cause) of the papers of an individual has never been decided against such individual by the Supreme Court of the United States.

3. The strengthening of Government by Law demands that the Supreme Court for the benefit of the lower Courts reaffirm the validity of the Fourth Amendment.

Wherefore, I ask that a *Writ of Certiorari* issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record in the case numbered and entitled on its Docket Number 10791, "Martin P. Durkin, Secretary of Labor, Petitioner, vs. Paul C. Fisher, d/b/a Fisher Pen Company, Defendant," to the end that the judgment herein of that Court may be reviewed and reversed by this Court.

PAUL C. FISHER,
Petitioner, pro se.

IN THE

Supreme Court of the United States

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No.

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Petitioner,

v.

MARTIN P. DURKIN, Secretary of Labor,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Statement of the Case

This case is adequately covered by the opinion of the United States Court of Appeals for the Seventh Circuit as herein reprinted in my "Summary Statement of the Matter Involved."

ARGUMENT

I

The District Court's "order to produce documentary evidence" violated the Fourth Amendment and was, therefore, unconstitutional and void.

The Fourth Amendment contains, first, a general guarantee:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreason-

> able searches and seizures, shall not be violated, * * *"

Secondly, it designates those elements necessary to effectuate the guarantee against unreasonable searches and seizures:

> "* * *, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In order to prevent the unreasonable searches and seizures dreaded by the framers of the Amendment, enforcement of both clauses of this Amendment becomes imperative. Failure to do so, would negate the first clause in that it would permit unreasonable searches. The intended protection of this Amendment would be denied. It would lose its vitality. The Amendment is framed so as to exclude any such fallacious conclusion. This interpretation of the true meaning of the provisions in the Fourth Amendment is stated by the Supreme Court:

> "* * * The first clause of the Fourth Amendment declares: The right of the people to be secure in their persons, papers, houses and effects, against unreasonable search and seizure shall not be violated. It is general and forbids every search that is unreasonable; it protects all, those suspected or known to be offenders as well as the innocent, and unquestionably extends to the premises where the search was to be made and the papers taken. * * * The second clause declares: and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. This prevents the issue of warrants on loose, vague or doubtful base of facts. It emphasizes the purpose to protect against all general searches. Since before

> the creation of our new government, such searches had been deemed obnoxious to fundamental principles of liberty * * * The need for protection against them is attested by history and present conditions. The Amendment is to be liberally construed and all owe the duty of vigilance for its effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted * * *".
>
> *Go-Bart Importing Co.* v. *United States,* (1931) 282 U. S. 344, 357.

The safeguards provided are clearly stated in the Amendment. There must be:

1. a showing of probable cause
2. which is supported by Oath or affirmation, and
3. particularity in describing the place to be searched and the persons or things to be seized.

This is a protective formula. Every provision of this formula must be met.

That they were not met in the issuance of the Court's "Order to Produce Documentary Evidence" in this case is clear.

The Government made no effort to show probable cause and indeed argued that no showing was necessary. (R. Page 21)

The District Court in its "Findings of Fact and Conclusions of Law" (Rec. Page 53, 54, 55) held that its "Order to Produce Documentary Evidence" (R. Page 27) was valid and legal irrespective of the failure to show probable cause.

Furthermore, no testimony was taken under Oath to establish the existence of probable cause and, indeed, there has never been any affirmation under Oath at any time in these proceedings to establish probable cause.

The Plaintiff's petition for the "Order to Produce Documentary Evidence" (R. page 4-9) does not even purport to be an affirmation under oath that probable cause exists. The affidavit of Edward J. Calihan Jr. attached thereto recites merely that the information contained therein is "based upon information obtained from an examination and reading of the inspection file of the Wage and Hour and Public Contracts Divisions covering the attempted inspection of the respondent; and that he believes them to be true."

This does not constitute an Oath or affirmation that probable cause exists for the search which the Plaintiff was seeking.

According to Webster's Collegiate Dictionary Fifth Edition, Page 790, published by G. & C. Merriam Co., 1946

> "Probable cause, LAW: A reasonable ground of presumption that a charge is well founded."

How can there be "probable cause" here when there wasn't even a complaint or charge of any kind against the defendant?

This is a case in which the Government has no interests of its own. There is no tax involved here and the Labor Department does not claim that they want this search in order to gather data for some Governmental purpose. It is an arbitrary and senseless search demanded without "probable cause" for no reported reason whatsoever.

The Fourth Amendment requires "probable cause," for all compulsory searches of individuals and "probable cause" by definition is a charge based upon evidence.

This demanded search was made without "probable cause" and is therefore null and void.

II

The District Court erred in ruling that the "order to produce documentary evidence" which it issued on June 27, 1952, was not a warrant within the meaning of the Fourth Amendment.

At no stage in the proceedings did the prosecuting attorneys or the Court make any claim that probable cause existed for the Court's issuance of the "Order to Produce Documentary Evidence." Their position throughout the proceedings was summed up by Judge Igoe in ruling that the Defendant was in contempt of court. The Court stated:

> "There has been no warrant here for Mr. Fisher or anything he referred to as his property." (R. Page 48)

Review of the authorities demonstrates that this ruling was clearly erroneous:

According to Black's Law Dictionary, Third Edition Page 1831

> "*Warrant,* n. 1. A writ or precept from a competent authority in pursuance of law directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage, if he does it. *People* v. *Wood,* 71, N. Y. 376"

According to Webster's Collegiate Dictionary, Fifth Edition, Page 1134

> "*Warrant,* n. 1. Authorization; sanction of law or of a superior. 2. A guaranty; security. 3. A document giving authority to do something. Specif: a. A writing which authorizes a person to pay or deliver to another and the other to receive money

> or other thing; as, a warrant on a city treasurer. b. Eng. A form of receipt given to a person who has deposited goods in a warehouse, by assignment of which the title to the goods is transferred. c. Law. A precept of writ issued by a competent magistrate authorizing an officer to make an arrest, a seizure, or a search, or the like."

According to these definitions it would appear that the Court's "Order to Produce Documentary Evidence" is undoubtedly a Warrant in the generally accepted meaning of the Word Warrant. Of course, the meaning involved here is that which was meant by the men who drafted and adopted that Constitution many years ago.

At that time, the people of this country were still smarting from the wounds left by arbitrary and dictatorial searches and seizures conducted with the aid of the notorious "Writ of Assistance".

The adoption of the Fourth Amendment resulted from the fear well expressed by Elbridge Gerry in one of his pamphlets written during the debates over the Constitution.

> "I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence."
>
> *"The Federalist and Other Constitutional Papers"*, Chicago, 1894, Albert, Scott & Co., p. 723.

The safeguards embodied in the Fourth Amendment can be better understood by considering them in the light of this historical background. The mandatory prohibitions of the Fourth Amendment were intended to forever free the citizen from further harassment of a general search and seizure.

The Fourth Amendment guards against all unreasonable searches and seizures and has been so interpreted by the Courts:

> "We are also of the opinion that an order for the production of books and papers may constitute unreasonable search and seizure within the Fourth Amendment. * * * the substance of the offense is the compulsory production of private papers, *whether under a search warrant, or a subpoena duces tecum.*" *Hale* v. *Henkel* (1906) 201 U. S. 43, 76. (Italics added.)

Substance is given to the form of the Fourth Amendment by the courts. They have required Subpoenas, and other warrants, to be predicated upon the existence of evidence—the existence of probable cause. The following illustrates an application of this principle:

> "Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire, and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. * * * It is contrary to the first principles of justice to allow a search through all the respondent's records, *relevant* or *irrelevant,* in the hope that something will be turned up."
>
> *Fed. Tr. Com.* v. *American Tobacco Co.,* (1924) 264 U. S. 298, 305. (Italics added.)

That the Administrator, in the exercise of his visitorial powers, must keep within the limitations prescribed by the Fourth Amendment to the Federal Constitution, was clearly expressed in the same case:

> "The analogies of the law do not allow the party wanting evidence to call for all documents in order

> to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. * * * A ground must be laid and the demand must be reasonable."
>
> *Fed. Tr. Com.* v. *American Tobacco Co.*, 264 U. S. 298, 306.

The requirement of probable cause has been so universally recognized as to find some recognition in almost every decision on what constitutes an unreasonable search and seizure. Quotations from a few of the cases will illustrate the complete acceptance of the test:

> "It will be conceded, of course, that an officer has no right to assume that an apparently innocent and unoffending person is actually engaged in a violation of the law. Therefore, such officer would not be acting reasonable—would be acting unreasonably—were he to subject apparently innocent and unoffending persons to search or their effects to seizure. Having no reason to believe in their guilt, it would be unreasonable to act as if they were in fact guilty."
>
> *U. S.* v. *Vatune*, (D.C., N. D. Cal., S.D.) 292 Fed. 497, 499.

The same theme can be found in the following words:

> "Doubtless many, if not all, of the documents may ultimately be required, but some necessity should be shown, either from the examination of the witness orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers."
>
> *Hale* v. *Henkel*, 201 U. S. 43, 77 (1906).

The men who framed and adopted this Amendment did so because they were aware of the fact that government

by its very nature tends to be oppressive and that the history of human freedom is the history of the limitation of governmental power. This view is well expressed by the Supreme Court:

> "* * * It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or gradual deprecation of the rights secured by them, by imperceptible practice of courts or by well-intentioned but mistakenly over-zealous executive officers * * *."
>
> *Gouled* v. *U. S.* (1920) 225 U. S. 298, 304.

The only conclusion that can be objectively and honestly reached from the above is that the District Court's Order was a warrant and that "probable cause" must be shown or claimed before that order can be considered legally in conformity to the Fourth Amendment.

III

The United States Court of Appeals for the Seventh Circuit erred in applying the following dissimilar cases to this situation (R. 71):

Oklahoma Press Pub. Co. v. *Walling,* 327 U. S. 186;
Fleming v. *Montgomery Ward & Co.,* 114 Fed. (2) 384;
Shapiro v. *United States,* 335 U. S. 1;
Endicott Johnson Corp. v. *Perkins,* 317 U. S. 501;
United States v. *Darby,* 312 U. S. 100;
Davis v. *United States,* 328 U. S. 582.

The question in this case is: Can a Court legally force a search of the records of a private *individual* without "probable cause supported by oath or affirmation"?

This question was not before the Courts in any of the above cases and was not and could not be decided by the opinions rendered in those cases.

In *Oklahoma Press Pub. Co.* v. *Walling,* 327 U. S. 186, on page 190 of that case, the Supreme Court held:

> "* * * the Circuit Court of Appeals for the Tenth District * * *" held "that the administrator was entitled to enforcement upon showing of 'probable cause', which *it found had been made.*" (Emphasis supplied.)

This case differs in that there has been no finding in this case that "probable cause" exists.

This case also differs in that Oklahoma Press Pub. Co. was a *corporation* and the Supreme Court held on page 388:

> "In *Wilson* v. *United States,* supra, note 4 (221 U. S. 361, 31 S. Ct. 545, 55 L. Ed. 771, Ann. Cas. 1912 D, 558) the Supreme Court stated that the '*corporate* form of business activity, with its chartered privileges, raises a distinction when the authority of government demands the examination of books'; and that the *corporation* had no privilege to refuse a demand 'expressed in lawful process, confining its requirements within the limits which reason imposes in the circumstances of the case.'" (Emphasis added.)

Fleming v. *Montgomery Ward & Co.* (114 Fed. (2) 384) was again a case against a *corporation* and not against an individual and again it was agreed by all parties that "probable cause" had been shown.

In *Shapiro* v. *United States* (335 U. S. 1), the question involved was the right of an individual to claim immunity from prosecution for matters disclosed by sales records he turned over to the price Administrator pursuant to an Administrative subpoena. The Supreme Court held over

vigorous dissents by four justices that the records in question became public records by virtue of a requirement in Section 14 of Maximum Price Regulation No. 426 and that no privilege against self-incrimination attached to such records. No question involving the Fourth Amendment was before the Court or involved in its decision. In this case on the other hand the defendant is making absolutely no claims under the Fifth Amendment.

Endicott Johnson Corp. v. *Perkins,* 317 U. S. 501, is a case involving the enforcement against a *Corporation* of an administrative subpoena duces tecum issued by the Secretary of Labor in pursuance of an investigation of alleged violations of the Walsh-Healey Public Contracts Act. The Endicott Johnson Corporation was the recipient of several Government Contracts for boots, shoes, gymnasium shoes and arctic overshoes. Under those contracts the Corporation agreed to produce that material under certain conditions. The alleged violations constituted "probable cause" along with the direct Government interest.

This case did not consider nor decide the rights of an individual under the protection of the Fourth Amendment.

United States v. *Darby* (312 U. S. 100), questions the power of Congress to regulate minimum wages paid in the manufacture of goods to be shipped in interstate commerce. There was no question raised in this case as to unreasonable search or seizure. It was a test of the Fair Labor Standards Act of 1938 only in so far as the Fifth and Tenth Amendments were concerned. The application of the Fourth Amendment was not involved nor considered.

In *Davis* v. *United States* (328 U. S. 582), it was held that agents of the Office of Price Administration might lawfully seize ration coupons from an individual as a reasonable incidence of his arrest. The Court excepted "Private" papers from the scope of its ruling pointing out

that title to the coupons seized remained at all times in the government. (328 U. S. at pp. 587-588). Ration Order No. 5 C provided in s 1394.8104 (a) concerning these coupons as follows:

> "all coupon books, bulk coupons, inventory coupons, other evidences * * * are, and when issued, shall remain, the property of the Office Of Price Administration. The Office of Price Administration may refuse to issue, and may suspend, cancel, revoke, or recall any ration and may require the surrender and return of any coupon book, bulk coupon, or other evidences * * *"

The *Davis* decision was thus clearly limited to the right of an administrative agency to recover papers, title to which remained in the agency. Even if the records sought by Plaintiff in this case were "required records" this would not affect the protection afforded Defendant by the Fourth Amendment unless title to the records was vested in the Administrator.

That title is not so vested in him is clear from the language of Section 11(c) of the Fair Labor Standards Act

> "(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder."

The only right reserved to the Administrator is the right to require "reports" from such records. Section

11(c) does not make defendant's records public records or authorize the Administrator to seize them.

The Administrator himself recognized the private nature of the records he seeks by describing them in his application for an enforcement order as records "of the respondent relevant to said investigation." (SR 9)

Being private, Defendant's records are not subject to seizure without a warrant based on a showing of "probable cause supported by oath or affirmation."

It is, therefore, clear that the United States Court of Appeals for the Seventh Circuit erred in holding that the above cases decided the issue involved in this case.

IV

The United States Court of Appeals for the Seventh Circuit erred in holding: "* * * the authority to compel respondent to produce the documents in question is encompassed in the Congressional Act * * *".

Congress has no legal power to nullify the Fourth Amendment and the wording of the Acts indicates that Congress never intended to subject an individual to compulsory searches demanded without "probable cause."

Section 9 of the Federal Trade Commission Act (Title 15 U. S. C. A. Sec. 49) states:

> "Sec. 49. * * *
>
> Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any *corporation* or other person, issue an order requiring such *corporation* or other person to appear before the commission or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; * * *" (Emphasis added.)

This above clause which is adopted by reference in the Fair Labor Standards Act authorizes the Administrator to subpoena the books and records of a *CORPORATION* which is a party to a proceeding brought by the Administrator and the records in control of an individual where such individual is called as a witness in a proceeding against a *Corporation* but it DOES NOT and CAN NOT authorize the subpoenaing of the records of an individual where such individual is the party being proceeded against. This demonstrates Congress's intent not to authorize the issuance of a subpoena against an individual where the individual is the party proceeded against and no "probable cause" exists.

In commenting on Section 9 of the Federal Trades Commission Act which provides for the Administrator's subpoena powers the courts have held that this right to subpoena is governed by the prohibitions that are set in the Fourth Amendment:

> "Reading sections 5, 6 and 9, I do not think that the Congress intended, at the time of the enactment of this law, to go beyond the well-recognized principles of limitations with reference to searches and seizures guarded against by the Fourth Amendment of the Constitution. It is better extracted by the procedure long established in the courts in conformity with the constitutional guaranty against unlawful and unreasonable searches and seizures, and the right of people to be secure in their papers and effects, to deduce the intention that information should only be therefrom. The Fourth Amendment provides: The right of the people to be secure in their * * * papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized! This com-

mand of the Constitution, properly interpreted, is a prohibition against Congress granting powers to the commission for unlimited searches and seizures of letters and documents. The act makes plain the duty of the commission to gather, compile, and publish for use in its proceedings what may be voluntarily offered or submitted in response to request or demand. It may also make investigation independently, but the exercise of visitorial power over private corporations must keep within restrictions of the Fourth Amendment * * * Section 6 (b) grants to the commission the right to require corporations coming within its jurisdiction to make reports concerning their affairs and thus to furnish to the commission such information as it may require. And subdivision (a) of Sec. 6 calls upon the corporation in question to report upon specific matters as provided in subdivision (b). If the corporations fail in reporting or the reports are false, the commission is entitled, upon properly showing the probable cause, to demand due disclosures and access to the inspection of any specific, necessary, and relevant papers as may be privileged. In other words, there must appear to be some reasonable cause for a search, such as a definite complaint charging a specific wrong, and thus presenting an inquiry which would have reasonable and readily ascertainable limits. Such a construction of subdivisions (a) and (b) of Sec. 6 would effectuate the intent of Congress, and the procedure can be kept within constitutional limits. * * * Such a construction would seem to be in accord with the discussions in the Senate when this legislation was enacted. See 51 Congressional Records, pt. 13, 63rd Cong. 2d Sess. pp. 12,737, 12800, 12806-11, 12918, 12,927. It was not intended to grant an unlimited power of inquisition or an unlimited power of access to books and papers of private parties

not engaged in any public service, or a search without basis of some facts tending to establish a charge of wrongdoing."

Fed. Tr. Com. v. *P. Lorillard Co.* (1922), 283 Fed. 999, 1005.

CONCLUSION

In conclusion, I submit that there is a Constitutional question involved here as to the rights and the freedom of an individual as guaranteed by our immortal "Bill of Rights" which is still the LAW of the land. The people's faith in our Government of Law and Justice demands that the issues here involved be reviewed in order that the people may understand that our Courts are still dedicated to the preservation of that *written LAW* and the *people's rights*.

Respectfully submitted,

PAUL C. FISHER,
Petitioner, pro se.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 378

PAUL C. FISHER, DOING BUSINESS AS FISHER PEN COMPANY, PETITIONER

v.

MARTIN P. DURKIN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court (R. 53–55) are not officially reported. The opinion of the Court of Appeals (R. 68–71) is reported at 204 F. 2d 930.

JURISDICTION

The judgment of the court below was entered on June 17, 1953 (R. 72). The petition for a rehearing was denied on July 13, 1953 (R. 85). The petition for a writ of certiorari was filed on September 26, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the Fourth Amendment to the Constitution requires a specific charge or complaint of violation of law as a condition to enforcement of a subpoena for the production of records relevant to an investigation under the Fair Labor Standards Act.

STATUTES INVOLVED

Sections 9 and 11 (a) of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C. 201 *et seq.*,[1] and Section 9 of the Federal Trade Commision Act, c. 311, 38 Stat. 717, 15 U. S. C. 49, are set forth in the Appendix, *infra*, pp. 10–11.

STATEMENT

Petitioner is the sole proprietor of an establishment located at 757 West Waveland Avenue, Chicago, Illinois, where he does business under the name of the Fisher Pen Company (Fdg. 1, R. 54). His business consists of the production, sale, and distribution of ball point pens and precision parts for the electronics industry (Fdg. 1, R. 54).

The subpoena *duces tecum* here involved seeks the production of books and records (R. 17), which petitioner refused to make available to the Wage and Hour Division for examination in connection with an investigation under the Fair Labor Standards Act of 1938, as amended (R. 16). Beginning

[1] The cited sections of the Fair Labor Standards Act of 1938 are not affected in any way by the Fair Labor Standards Amendments of 1949 (c. 736, 63 Stat. 910, 29 U. S. C. Supp. V, 201).

February 1, 1952, the Division made several unsuccessful attempts to secure petitioner's consent to inspect these books and records on a voluntary basis at his place of business (R. 16–17). An administrative subpoena, which was served on petitioner on April 2, 1952 (R. 10), called for petitioner's wage and hour records for the period from March 1, 1950, to March 1, 1952, and records and other data showing shipments made and received by petitioner during the same period (S. R. 9).[1] That subpoena directed that the records be produced at the Wage and Hour Division's Chicago office on April 14, 1952 (R. 11), in the city in which the records were kept.

Petitioner appeared at the time and place directed, but failed and refused to produce the records and documents specified in the subpoena (R. 11). Therefore, on May 21, 1952, application was made to the district court for an order enforcing the subpoena (R. 12). After due notice and hearing (R. 12, 15–26), at which petitioner was present (R. 21, 54), the district court, on June 27, 1952, entered an order directing petitioner to produce and make available to the government officers the records specified in the subpoena at petitioner's own place of business on July 28, 1952 (R. 27), a month later. Petitioner took no appeal from this order, although the district court allowed a period of 30 days before ac-

[1] S. R. refers to the "Supplemental Transcript of Record."

tion was required, explaining to petitioner personally that this was to give him ample time to appeal if he wanted to (R. 25–26). On July 22, 1952, by letter to the district court, petitioner expressed his determination to "stand my ground and let the Court endeavor to force compliance with its demand—if it can," expressing his determination *not* "to appeal this order," scorning that procedure as "special justice which is reserved for the wealthy alone." After referring to his "courage," petitioner concluded with the prediction "that I will not fail in this battle with the Court" (R. 33–35).

As he had done previously, petitioner personally appeared at the time and place specified by the order of the court (R. 62, amended fdg. 6), but again refused to produce the records. Thereupon, the Secretary of Labor applied to the district court for a rule to show cause why petitioner should not be adjudged in civil contempt (R. 28–30).

At the hearing petitioner explained, "I have not complied with this Court's order of June 27th because of the reasons as outlined in my letter of July 22nd to this Court" (R. 40). As the district judge noted, "He has failed to avail himself of that opportunity [to appeal] and he is back here again with practically the same defense he made in the original fashion" (R. 48). On September 18, 1952, after the hearing, the trial court entered findings of fact and conclusions of

law (R. 53–55), which found petitioner guilty of civil contempt as charged (R. 55, Concl. 3). On the same date, an order was entered adjudging him to be in civil contempt, and directing that he be committed to the custody of the Attorney General for imprisonment, "until he should purge himself of said contempt by producing the books, records, and documents specified * * *" (R. 55–56). Commitment was stayed on petitioner's own individual recognizance in the sum of $200 pending appeal (R. 56). On October 17, 1952, petitioner appealed from the order adjudging him in contempt (R. 57), and the Court of Appeals for the Seventh Circuit affirmed. No appeal from the order requiring him to produce the records was ever filed.

ARGUMENT

1. No questions of substance are presented which have not already been settled by *Oklahoma Press Co.* v. *Walling*, 327 U. S. 186, approving judicial enforcement of subpoenas substantially identical to the one here involved (compare S. R. 9 with 327 U. S. at 210 n. 46). It was there held that records similar to those sought here are relevant to the investigations authorized by the Fair Labor Standards Act, and that a subpoena for such records presents "no question of actual search and seizure [under the Fourth Amendment], but raise[s] only the question whether orders of court for the production of specified records have been validly made." *Id.* at 195. The *Okla-*

homa Press decision also specifically disposed of the contention (cf. Pet. 13–17) that the order enforcing the subpoena constitutes a "warrant" without a showing of "probable cause." "It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one * * *. The requirement of 'probable cause, supported by oath or affirmation,' literally applicable in the case of a warrant, is satisfied in that of an order for production by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry." *Id.* at 208–209.

Petitioner's attempt to distinguish the *Oklahoma Press* decision on the ground that it involved corporate records, while the instant case involves the records of an individual businessman, is without substance. The *Oklahoma Press* decision did not rest on the ground that a corporation lacks the right to invoke the Fourth Amendment. On the contrary, the requirements of the Fourth Amendment were examined as if applicable, the Court concluding that "the Fourth, if applicable, at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described,' if also the inquiry is one the demanding agency is authorized by law to make and the materials specified are relevant. The gist of the protection

is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable." *Id.* at 208. Moreover, this Court's decisions in analogous situations involving the immunity provisions of the Fifth Amendment show conclusively that there is no distinction between corporate and non-corporate business records where such records are required to be kept by law for purposes of enforcement of a Federal statute. Thus, in *Shapiro* v. *United States,* 335 U. S. 1, this Court held that the rule with respect to production of corporate records (announced in *Wilson* v. *United States,* 221 U. S. 361, and reaffirmed more recently in *Davis* v. *United States,* 328 U. S. 582) was equally applicable to the records of an individual businessman where the records involved are "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established" (335 U. S. at 33). In so holding, the Court cited *United States* v. *Darby,* 312 U. S. 100 (a case under the Fair Labor Standards Act), and explicitly referred to the part of the *Darby* opinion upholding the record keeping requirements of the Fair Labor Standards Act (335 U. S. at 33 n. 42).

The records which were ordered produced in the instant case plainly fall within this category of "required records" by reason of Section 11 (c) of the Act and Title 29, C. F. R., Part 516,

15 F. R. 3096–3101. See also *United States* v. *Darby,* 312 U. S. 100, 125. The lower federal courts have, accordingly, correctly assumed that the *Oklahoma Press* decision is applicable to individual businessmen as well as corporations. See *Porter* v. *Mueller,* 156 F. 2d 278, 280 (C. A. 3); *Hagen* v. *Porter,* 156 F. 2d 362, 366 (C. A. 9), certiorari denied, 329 U. S. 729; *Raley* v. *Porter,* 156 F. 2d 561 (C. A. D. C.), affirmed on another ground, 331 U. S. 111; *Dossett* v. *Porter,* 161 F. 2d 839, 842 (C. A. 6), certiorari denied, 332 U. S. 771, involving subpoenas under the Emergency Price Control Act in which Fourth Amendment defenses were rejected by the courts. See also *United States* v. *Jones,* 72 F. Supp. 48 (S. D. Miss.), so holding with respect to records of an individual in an action arising under the Fair Labor Standards Act. The decision below is, therefore, clearly correct and presents no conflict of decisions.

2. Even if there were any merit in petitioner's objection to the order enforcing the subpoena, the decisions of this Court would preclude petitioner from questioning the propriety and scope of the original order of enforcement in a subsequent contempt action. *Maggio* v. *Zeitz,* 333 U. S. 56; *McComb* v. *Jacksonville Paper Co.,* 336 U. S. 187; *United States* v. *Mine Workers,* 330 U. S. 258. See also *Woods* v. *Fliss,* 168 F. 2d 612 (C. A. 7). Having failed to appeal from the original enforcement order, petitioner is now

barred by "the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy." *Maggio* v. *Zeitz*, 333 U. S. 56 at 69.

CONCLUSION

The decision of the court below is clearly correct and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Acting Solicitor General.

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
SYLVIA S. ELLISON,
Attorneys,
United States Department of Labor.

OCTOBER 1953.

APPENDIX

Fair Labor Standards Act, c. 676, 52 Stat. 1060 (29 U. S. C. 201 et seq.):

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

* * * * *

SEC. 11. (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12,

the Administrator shall bring all actions under section 17 to restrain violations of this Act.

Federal Trade Commission Act, c. 311, 38 Stat. 717 (15 U. S. C. 49):

SEC. 9.

* * * * *

* * * in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * *

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In the

Supreme Court of the United States

OCTOBER TERM, 1953

No. 378

PAUL C. FISHER, d/b/a FISHER PEN COMPANY,
Petitioner-Defendant,

v.

JAMES P. MITCHELL, Secretary of Labor,
Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PAUL C. FISHER,
Petitioner, pro se,
757 W. Waveland Avenue,
Chicago 13, Illinois.

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PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The defendant, Paul C. Fisher, again asks that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on June 17, 1953, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, dated September 18, 1952.

CERTIFICATE OF GOOD FAITH

I, hereby, certify to the Court that this petition is presented in good faith upon other substantial grounds available to me, although, not previously presented and that it is not presented, primarily, for delay.

PAUL C. FISHER, *pro se.*

NATURE OF THE CASE

This is a case in which an individual is trying to help preserve the integrity of our Government by making a stand against an unconstitutional, unreasonable attempted search of private records without any showing whatsoever of probable cause by the United States Department of Labor as required by the Fourth Amendment.

In this case the petitioner-defendant, an individual, has been convicted of contempt of court for failure to comply with a Federal District Court Order (issued without any showing of "probable cause") demanding that his PRIVATE records be turned over to the U. S. Department of Labor for search by officials of that department.

SUPREME COURT RULE UNDER WHICH THIS PETITION FOR REHEARING IS FILED

Rule 33 of the *Supreme Court of the United States (Revised)*, as amended October 13, 1947.

SUBSTANTIAL OTHER REASONS FOR THE ALLOWANCE OF THIS WRIT

The integrity and the honesty of the Federal Court as well as the Bill of Rights are on trial in this case. The preservation of that integrity requires that the Courts re-examine this case and determine specifically how and if the Fourth Amendment applies to the issues here.

The legal power of all branches of the United States Government originate with the Constitution of the United States. The power and legal authority of the Federal Courts are derived from that Constitution which is the very foundation of our Government. The men who wrote and adopted that Constitution recognized that this foundation must be defended and protected if our Government and our People were to prosper and remain strong. Accordingly they required that all Federal Judges before taking office, first take an oath to support and defend that Constitution.

That oath of office reads:

> "I do solemnly swear that I will support and defend the Constitution of the United States against *all* enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office on which I am about to enter so help me God."

To comply with this oath is the primary duty of the Federal Courts. To violate this oath or to fail to support and defend that Constitution will destroy the integrity of

our Courts and in time, the defendant believes, will destroy the Government of the United States.

The Undisputed Facts

This is a simple case, the facts have been established and are not contested.

1. The Federal District Court issued an order (subpoena duces tecum) demanding that the defendant produce his private records for search by the United States Department of Labor.

2. The order was issued without any showing whatsoever of probable cause supported by oath or affirmation as required by the Fourth Amendment.

3. There is no charge or complaint of any kind against the defendant that he has violated a law or rendered an injustice.

4. No reason for the attempted search has been given except as a presumed prerogative given to the Labor Department by the Wage and Hour Law of 1938.

5. The Fourth Amendment reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment states that the right of the people to be free from unreasonable search shall not be violated.

The Fourth Amendment also states that an unreasonable search is one which is not made "upon probable cause supported by oath or affirmation."

In this case, the District Court's order to produce private records constitutes a forced search and was issued without "probable cause supported by oath or affirmation." This fact is uncontested. See the opinion of the Circuit Court. (R. 71.)

Therefore the District Court's order was issued in violation of the Fourth Amendment of the Bill of Rights and is unconstitutional, null and void.

The attorneys for the Labor Department have argued that the Court's order was not a warrant and so did not require "probable cause."

What kind of legal trickery and double talk is this? Would they wish away the legal protection of the Fourth Amendment by distorting the meaning of the word, warrant, as it was used by the men who wrote that Bill of Rights? Would they nullify our laws with a gimmick?

The meaning of the word, warrant, was correctly defined by the defendant on page 13 of his original Petition for Writ of Certiorari. This definition has not been challenged nor can it be honestly challenged.

Who can honestly deny that the Fourth Amendment was intended to prohibit unreasonable searches and that the existence of "probable cause supported by oath or affirmation" is the intended requirement for reasonableness?

To allow searches without just reason or without probable cause simply by changing the method from forced seizure to one of compelling the victim to produce the records against his will or suffer imprisonment defeats completely the intent and the spirit and the letter of the law.

A Constitutional Question

This is a constitutional question—basic and fundamental —and the integrity of the Courts (who are pledged to uphold that Constitution) requires that the Courts face this issue frankly and honestly.

Both the District Court (R. 47-50) and the Circuit Court of Appeals (R. 68-71) failed to consider the language of the Fourth Amendment as it applies to the issues here.

The defendant, in good faith, in his Petition for Rehearing to the Circuit Court of Appeals (R. 75-84) asked that Court to explain, if it could, how the Court's action could be reconciled with its oath of office and the Fourth Amendment. The Court of Appeals for the Seventh Circuit ignored the defendant's questions and in effect condemned the defendant to jail, without even an effort to explain its decision in which it had ignored and failed to consider the language of the Fourth Amendment.

Were the defendant's questions ignored because they were embarrassing—because the Court can not honestly explain its decision?

The Defendant's Charge

The defendant feels that this case proves that the particular judges who ruled here have failed to accurately,

literally and honestly interpret and enforce our basic law, the Constitution of the United States.

If such is the case then the preservation of the integrity and reputation of our Federal Court System as well as our Bill of Rights, demands that this case be heard by the Supreme Court in order that the defendant's questions may be answered.

Involves Basic Philosophy of Government

This is a situation which involves the basic philosophy of government. The importance and the significance of a decision in this case goes far beyond the importance of the individuals or the circumstances immediately involved.

A correct decision, here, requires a proper understanding of fundamentals. The defendant believes that a re-examination of those fundamentals at this time is both pertinent and required in order to explain and defend his position. For that reason, in the following few pages, he will try to outline briefly for the Court the fundamental philosophy which lies behind the facts and superficial points of disagreement.

It makes little difference whether or not the defendant in this case goes to jail. The defendant does not have a martyr complex and has no intention of remaining in jail to his own detriment. On the other hand, the defendant believes that his books and records are in good condition and that he has carefully complied with the Wage and Hour law so that he has nothing to fear from a Labor

Department search of either his PRIVATE RECORDS or the particular records required to be kept by law.

The Defendant's Stand Not Based on Fear

The defendant in this case has not made this stand in defense of the Fourth Amendment because of fear nor has he made it because of any antagonism or feeling of disrespect for the Labor Department or the Courts. He has made it in an effort to render a public service by helping to clarify our thinking and our understanding of the true function of government.

When the defendant first became involved in this defense of the Fourth Amendment, his legal advisors told him that he could not win this case. He was told that the Courts by interpretation had so altered the original intent of the Fourth Amendment that his arguments would be considered frivolous and his efforts would be completely wasted.

Courts Generally Are Objective and Impartial

Since that time, he has read many decisions by the higher Courts. It is true that all judges are human beings and all human beings are subject to error, but from his studies he has learned to respect the opinions of the Courts. He frankly, has been amazed at the objectivity and impartiality with which justice is administered. He has found little to object to in the decisions which he has read, but instead has found much to confirm his own convictions and to support the position he has taken here.

He is proud to be an American and to have the opportunity to make his own defense. He chose to defend himself pro se, for two reasons: 1. He wanted to present his own arguments in his own way and to explain his position in his own words. 2. By defending himself he helped to minimize the expense involved and to preserve his limited financial position.

However, he has had much advice and much help in the preparation of his defense by men who have far more experience and much greater knowledge at law than he possesses. To these men, who have so generously helped him in his efforts, he is deeply grateful.

An Experiment in Disobedience?

By inference, the Respondent called the defendant's efforts to defend the Fourth Amendment 'an experiment in disobedience.' In defense of his stand, he will try to explain to the Court very briefly why he is conducting this experiment. For a number of years he has watched with concern the growing centralization of power in this country. First it was economic power in the hands of big business and, now, more recently, it is the centralization of political power in the hands of big government. Unlimited power is a dangerous thing for a human being to hold whether he be a business man or an official of the Government, because power can be used to protect one from accountability. Man by his very nature is frail and subject to error and so too much power in time will corrupt the finest of men. The rest of us are corrupted more quickly.

Another Experiment in Disobedience

The men who were responsible for another experiment in disobedience, the American Revolution, understood these facts and so in writing the Constitution of the United States they designed a new form of Government—a Government with many limitations upon its power. The Fourth Amendment is one of those limitations. The power of this Court, in which this defendant is today allowed to make his plea, is another one of the limitations put upon the executive branch of our Government.

Two Views of Government

There are two general views as to the proper function of Government. The first view is that which was held by the men who wrote the Declaration of Independence and later the Constitution of the United States. These men looked at Government as a sort of umpire whose rightful function was to maintain peace and order—to guarantee the maximum amount of individual freedom by protecting us from taking unfair advantage of each other. These men believed that Government should not be allowed to meddle into private affairs without a just reason or "probable cause."

The other view of Government is the totalitarian view in which it is held that, due to the complications of modern society it is necessary for Government to come in and regulate our entire economic system. This view is incompatible with individual liberty and the defendant believes that it is also incompatible with the Bill of Rights, among which is the Fourth Amendment.

The War of Ideas

The real war in the world today is the war between these two different views and we might add that the totalitarian view is having its round of victories. In one country after another individual liberty has gone by the wayside before the onrush of totalitarianism. But this is a war of ideas—a battle for the minds and the hearts of men.

The Most Powerful Weapon

We Americans who believe in individual freedom seem to have forgotten that the most powerful weapon of all is the power of conviction and repetition. And so the forces of totalitarianism have grown stronger as our belief in freedom has grown weaker.

At times in our efforts for expediency we seem to forget the wisdom which our forefathers have passed down to us.

We Have Not All Forgotten

We should be disturbed by some of the things we see happening to our own Government. As we fight tyranny abroad, we seem to be losing our Freedoms at home. We are told that these Freedoms must be given up in order for us to fight more efficiently the foreign threats of oppression. We wonder at times if we have forgotten that Freedom is also a tremendous weapon which can conquer the minds of men and move them to great effort and great sacrifice. But we have not all forgotten. A short time ago we read a

little book, "The Key to Peace," by Clarence Manion. It had a tremendous impact upon our thinking and we believe will have the same impact upon the thinking of millions of other Americans.

The defendant is making this gesture against the superior odds of the Department of Labor because he hopes to demonstrate that we Americans can use our great heritage of Freedom and individual rights as a weapon against the enemies of Freedom who are confounding and confusing the World.

The Disobedience Here Is by United States Department of Labor

In another sense it is not the defendant who is conducting the experiment in disobedience at all. Because he believes that his actions are in conformity to the laws of our land. The disobedience here is being perpetrated by the Department of Labor in their efforts to deprive the defendant of his rights under the Fourth Amendment.

The Declaration of Independence states that: "All men are endowed by their Creator with certain unalienable Rights * * *." One of these rights, we believe, is our right to agree or disagree—to obey or disobey laws in contravention of our fundamental law—the Constitution.

I Have Chosen the Punishment

The officials of the Labor Department can try to punish the defendant and take this action against him in Court. If they succeed, he must obey or accept the punishment. He has chosen and will choose to accept the punishment be-

cause he believes that those officials are misusing their power and that his conviction in this will eventually win a victory in the cause of Freedom.

On Threshold of New Renaissance

The defendant believes that the World is on the threshold of a new renaissance—an awaking far more important than that which came 400 years ago. (R. 22.) This new day which is about to dawn will come when men learn to apply the scientific technique to the social sciences which include: Government, and Law.

Prior to four hundred years ago, man lived in what we now call the dark ages. He believed that the world was flat and that if you sailed far enough out beyond the horizon that you would either be devoured by a dragon or you would fall off the end of the earth and be destroyed. In the physical sciences man was quite ignorant. There was no science then of electronics, and no real science of chemistry or physics. Man's tools were still crude and his understanding of nature very limited.

Then something happened. Copernicus discovered the planets. Galileo invented the telescope and Columbus staked his life upon a theory that the world was round. That was the beginning—the dawn of the scientific age. Man had learned how to apply the scientific technique to the physical sciences. From that new technique has come the wonders of radio, television, jet planes and atomic bombs. These wonders prove the power of the human mind and man's ability to unravel the physical mysteries of nature.

In Government and Law We Still Live in the Dark Ages

However, our progress in the social sciences has not been so great. In government we are not far removed from the Romans or the Greeks. War still rages, periodically, throughout the World and there is no common agreement as to what is right and what is wrong.

In fact the World stands as never before on the brink of disaster—an atomic war with possible devastation beyond comprehension. Today—we still live in the Dark Ages in so far as the social sciences are concerned. We are like a small child playing with a stick of dynamite. We have put our hands on great destructive power and we don't know how to control either ourselves or this great new instrument of destruction.

In the physical sciences the scientific technique created a great area of common agreement among the scientists. The chemists now agree that water is composed of H^2O—that is two atoms of hydrogen and one atom of oxygen per molecule. It is no longer a debatable theory but a proven and demonstrable fact which has been proven time and time again in the chemistry laboratory. Upon such demonstrated facts the structure and progress of modern science has grown and is still growing.

Social Sciences Are Infinitely More Complicated

Because the apparently intangible human element makes the social sciences infinitely more complicated than the physical sciences and perhaps because our emotions and prejudices lie more closely to our social problems, man has,

so far, failed to apply successfully the scientific technique to government and law.

The defendant believes that our prejudices and our preconceived notions as to what is right and wrong are largely responsible for our failure in the social sciences.

Strongest Drive Behind Human Action Is Desire for Confidence

One of the most powerful drives behind human action is the individual's desire for self-esteem, honor and self-respect. They are the keys to self-confidence which in turn is the key to mental efficiency and happiness. Confidence and self-esteem are so important to the individual that he loses his emotional equilibrium when they are destroyed. If you criticize a man (no matter how justly) in such a way as to undermine his self-confidence, he must fight against and endeavor to protect himself from the damage of your criticism just as if you had attacked his life, because he knows (even if you don't) that his happiness and efficiency are dependent upon his confidence.

Even the man on skid row still has his pride and with his rationalization has found an excuse for his plight. He, too, will fight to defend the props with which he supports his wounded ego.

We who have not yet hit skid-row also have our self-esteem and the props by which we support it. Our pet theories, prejudices and our habits of thought are often inseparateably interwoven with our self-esteem so that we

may reject a new idea or theory without reason other than our instinctive need to protect our confidence and self-esteem.

All Facts Come From Experience

Scientific progress came in the physical sciences as men learned that the facts could be proven by demonstration in the laboratory and that by clinging realistically to those facts and rejecting false prejudices great things could be accomplished.

Although powerful and wonderful, when used properly, the human imagination has been the stumbling block in the way of scientific progress. Men with their imaginations had decided that the World was flat and so they called Columbus crazy and deluded.

But Columbus had seen the ships sink below the horizon as they sailed away and he knew that the Earth was not flat. He had learned the facts from expericnce and so had rejected the theory that had hampered exploration for so many hundreds of years.

The human mind does not create facts, it only observes them and scientific progress comes as we learn to accept honestly and accurately the facts which experience teaches.

To become a scientist in any field, man must learn to so condition his mind that he is able to accept accurately the facts from experience and reject more easily the false theories which habit and the imagination have created.

Scientific Technique Requires Four Things

The defendant believes that this scientific technique requires four things:

1. *Desire to accomplish something.* The scientific technique can not be applied aimlessly. It can only be used for a definite purpose and the stronger the desire to accomplish that purpose the more likely is success.

2. *Faith or confidence.* We must have faith or confidence that the purpose can be accomplished. The human mind is so constructed that it can accomplish only those things it believes are possible. When faith breaks down, the efficiency of the human mind breaks down with the loss of faith.

3. *Trial and error.* The facts and wisdom come only from experience. True progress comes only through the lessons we learn by making mistakes or by studying the mistakes which others have made. Thomas Edison made 10,000 failures or mistakes before he was able to make the first successful electric lamp. We must not be afraid to make mistakes and to analyze them honestly if we expect to learn.

4. *Complete devotion to the accurate truth.* This is the most difficult of the four things required for the scientific technique and the defendant believes, the one place we have failed so far in our efforts to apply the scientific technique to government and law. We must make experiments, correctly analyze their success or failure and be willing to admit when we have been wrong. The accurate truth (and it must by all means be as accurate as possible) is not an

easy thing to find. It requires great self-discipline, courage and basic honesty. It is so easy to let one's emotions and ideals run away with one's imagination and thereby close one's mind to the realistic facts of life.

Utopian Philosophy Is False

For example, there is an unrealistic and unprovable philosophy abroad in the World today that it is possible to create a Utopian society in which all men will live in peace and harmony without conflict or disagreement. It is a beautiful theory and appeals to the basic instincts of man who longs for perfection and peace, but denies the basic facts of life that a realistic and honest view will demonstrate time and time again. On every front and in all phases of life we find conflict, eternal conflict in the basic struggle for survival. Since the beginning of time as far as we can tell, life has been perpetually one of battle: Man against man, man against disease, against nature, against animals and other forms of life against each other. This battle for survival can be observed in a drop of water as the microscopic organisms devour each other. It can be observed in the jungle and in the fields and in the oceans as each plant and each animal pits itself against its environment in an effort to survive. Nowhere on Earth has man ever found Utopia except for fleeting moments of quiet and peace before the inevitable returning storm of struggle.

This is one of the first demonstrable truths which the scientific technique will reveal if we apply it to the social sciences.

Requires Courage and Complete Devotion To the Accurate Truth

But it requires courage and complete devotion to the accurate truth for us to accept such a disallusioning fact. It has long been a fond hope of man that someday Heaven on Earth would be a reality. But realism and truthfulness demands that we accept God's World as it is and accept the fact that conflict and struggle are part of the necessary ingredients of progress. It can be observed that when competition ends, degeneration and deterioration begin.

Dr. William Wirt once said, "I owe most to my enemies because it is they who have kept me on my toes." So in this case the defendant does not resent this battle with the Labor Department and the Courts because he has learned much from this battle and he has no doubt that someday that Labor Department and those Courts will be better because of this fight against an individual with a different viewpoint.

World Today Is on Brink of Disaster

With the World today on the brink of atomic warfare, it is well to pause and examine some of our basic theories. We have been seeking peace by greater and greater centralization of power. It is the desire of some to bring peace to the World by uniting it into one big happy family of nations where all conflicts and disagreements will be arbitrated and liquidated by negotiation, and where all of the great powers of destruction will be concentrated in a few hands so as to be held over the heads of the rest of the World as a threat against those who disagree and wish to

continue the inevitable competitive battle for survival. This view in the defendant's opinion is the result of a lack of devotion to accuracy of observation and the facts of life. Under the laws of nature since the dawn of history, basic disagreements and conflicts have been solved by only one method and that is by physical force either used or threatened.

This Case Will Be Solved by Physical Force

Physical force is the method by which this case will eventually be solved and if the physical force at the command of the Labor Department overpowers the defendant, he shall comply docilely enough while he whispers, "But according to the Fourth Amendment which is the LAW, that here applies, probable cause is still required for all searches of private records. In time I shall take my case to the People who will support me and vindicate me and then our Fourth Amendment shall live again. If I am right and right enough, I shall not fail."

Atomic War Is NOT Inevitable

The defendant believes that atomic war and in fact all war between nations can be avoided by a realistic recognition of three basic facts of life:

1. Basic conflicts and struggles between people is inevitable.

2. Physical force or threat of force is the final arbiter of all basic differences.

3. Too much power inevitably corrupts and brings eventual destruction to all people who use that power to protect themselves from fair competition.

And so World Government and World Communism by the accumulation of too much power will inevitably bring about their own destruction and at the same time fail to bring peace. The decentralization of power and the return of the American Government to its rightful place as an umpire in man's struggle for survival may ease World tensions by accelerating competition between individuals and thereby decelerating competition between nations.

CONCLUSION

The Supreme Court of the United States has a chance in this case to strike a tremendous blow against the centralization of Governmental Power simply by upholding and accurately interpreting the Fourth Amendment. If the Government is prohibited from searching private records without first showing probable cause, much of its power will be curbed and the defendant believes that the American People and the World will be much the better for it.

In this case before rendering a final decision, the defendant asks that the Supreme Court examine its conscience and remember that a fundamental part of the scientific technique is honesty and accuracy. If the Court will do this, it will remember that its basic duty is to "support and defend the Constitution of the United States against *all* enemies, foreign and domestic."

Respectfully submitted,

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